

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 33849 of 2007(D)

OS.112/2004 of PRINCIPAL SUB COURT,ATTINGAL
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PETITIONER:

**LAILA BEEGUM, D/O.PATHIMUTHU UMMAL,
AMALA GARDENS, THALAIKONAM, PANGAPPARA VILLAGE,
THIRUVANANTHAPURAM, REPRESENTED BY HER POWER OF
ATTORNEY HOLDER, LATHEEFA STALIN, D/O. DR.HANEEFA,
U.P.5/504, THURUVAIKAL, PULAYANARKOTTA,
THIRUVANANTHAPURAM.**

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS:

- 1. NOORJAHAN BEEGUM,
D/O. PATHIMUTHU UMMAL, GEESHAN LAND,
KULATHUMUTTAM, MANAMBOOR VILLAGE.**
- 2. THAHA, S/O. SHAHUL HAMEED,
PROPRIETOR, KOHINOOR HARDWARES, THEKKEVILA PUTHEN
VEEDU, NILAKKAMUKKU, KEEZHATTINGAL VILLAGE.**

BY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N. KRISHNAN, J.

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W.P.C. NO. 33849 OF 2007

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Dated this the 16th day of November, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Attingal in I.A.1394/07 in O.S.112/04. The petition is one for issuance of a Commission for measuring the property with the help of a surveyor. The suit is of the year 1997 and a written statement has been filed as early as in the year 1999. The suit was listed and examination of the witnesses were done by the Commissioner and it has also been submitted before the Court. At that stage the plaintiff has come forward with an application for issuance of a Commission for identifying the property with respect to the documents with the assistance of a Taluk Surveyor. The Court can understand some delay in prosecuting the matter diligently. But the Court cannot condone the delay which is inordinate and which results in functioning of the list system itself. In a suit of this nature

when the defendant has filed a written statement in the year 1999 itself disputing the identity of the property it was nothing but imperative on the part of the plaintiff to have taken steps for the issuance of a Commission. The case was represented before the Subordinate Judge, Alappuzha where also the matter is pending for the last three years and the application for issuance of a Commission is filed after examination of the witnesses on the plaintiff's side is over. I feel that this application cannot be entertained and it has been correctly rejected by the Court below. I also hold that this is not one compelling circumstance where the jurisdiction of this Court under Article 227 of the Constitution of India has to be exercised. Therefore, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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